

<p>DISTRICT COURT, DENVER COUNTY, COLORADO</p> <p>1437 Bannock Street Denver, CO 80202</p> <hr/> <p>GERALD ROME, Acting Securities Commissioner for the State of Colorado,</p> <p>Plaintiff,</p> <p>v.</p> <p>RICHARD ROOP, and BOTTOM LINE RESULTS, INC.,</p> <p>Defendants.</p>	<p>▲ COURT USE ONLY ▲</p>
<p>JOHN W. SUTHERS, Attorney General RUSSELL B. KLEIN, 31965* First Assistant Attorney General JENNIFER H. HUNT, 29964* Assistant Attorney General 1300 Broadway, 8th Floor Denver, CO 80203 Klein Tel: (720) 508-6413 Hunt Tel: (720) 508-6401 russell.klein@state.co.us jennifer.hunt@state.co.us *Counsel of Record</p>	<p>Case No.:</p> <p>Courtroom:</p>
<p align="center"><i>EX PARTE</i> VERIFIED COMBINED MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION WITH SUPPORTING LEGAL AUTHORITY AND REQUEST FOR EXPEDITED DISCOVERY</p>	

Plaintiff, Gerald Rome, Acting Securities Commissioner for the State of Colorado (the “Commissioner”), by and through his counsel, the Colorado Attorney General, hereby moves this Court for an *Ex Parte* Temporary Restraining Order and Preliminary Injunction against Defendants Richard Roop (“Roop”) and Bottom Line Results, Inc. (“BLR”), and as grounds for this Motion, states as follows:

INTRODUCTION

1. This Motion is made pursuant to § 11-51-602, C.R.S., which authorizes the Commissioner to bring this action to temporarily, preliminarily and permanently restrain and enjoin violations of the Colorado Securities Act (the “Act”) by the Defendants and to enforce compliance with the Act. The Commissioner incorporates herein by reference his Complaint for Injunctive and Other Relief (the “Complaint”) filed contemporaneously with this Motion.

2. Since at least 2008, Defendants have offered and sold over \$1.6 million in securities transactions in the form of promissory notes secured by mortgages or deeds of trusts on real estate. What the Defendants are offering investors are securities, but Defendants never properly registered their offerings with the Commissioner. And, although the manner in which Roop and BLR conduct business places them squarely within the definition of mortgage broker-dealers/sales representatives, Defendants have been selling their securities without a license since their licenses were summarily suspended and then revoked in 2012.

3. Despite the revocation of their licenses, the Defendants continue to offer to sell and sell securities from Colorado, including a sale to an investor as recently as October 2013. There is reason to believe that the Defendants will continue the illegal sale of their investments. Although the Defendants have provided some documents and records in response to administrative subpoenas issued by the Colorado Division of Securities, they have repeatedly resisted efforts by the Division to obtain complete responses to those subpoenas and other requests for records. To protect investors and halt Defendants’ unregistered and unlicensed securities offering, the Commissioner seeks a Temporary Restraining Order on an *ex parte* basis, a Preliminary Injunction, and expedited discovery.

4. The Commissioner is entitled to a temporary restraining order and preliminary injunction barring the Defendants from offering and selling securities in Colorado because the Defendants’ sales activities constitute violations of the Act. § 11-51-602(1), C.R.S. The promissory notes and real estate interests sold to investors are securities as contemplated by the Act in that they are at least notes, evidence of indebtedness, or investment contracts. *See* § 11-51-201(17), C.R.S. The Defendants have violated the Act by selling securities in Colorado in violation of the registration and licensing provisions of the Act, §§

11-51-301, 401, C.R.S.¹ Accordingly, in order to protect investors, the Commissioner requests this court enter an order halting Roop's and BLR's continued violation of these provisions of the Act.

FACTUAL BACKGROUND

5. Defendants' primary business is the purchase and sale of real estate, focusing on properties with non-resident owners and distressed properties, pre-foreclosure. Defendants use a "Private Lending Program" to finance these transactions, under which they obtain funds from independent third party investors solicited through word of mouth, banners on BLR's building and automobile, or on its website, www.resultsquick.com.

6. To entice potential investors, Defendants offer interest rates that are double or triple the rates that investors could achieve with bank certificates of deposit, generally between 8% and 10% annually. Defendants claim that these rates are possible because, by cutting out the middlemen, they can avoid paying real estate commissions, mortgage broker fees, loan fees, and property management fees.

7. Investors generally receive a deed of trust, frequently in a junior position, to secure a loan to purchase the distressed property. The term of the private loans varies from 2 years to 5 years. Investors can elect to receive payments of interest monthly, or allow the interest to accrue until the end of the loan term. Once Defendants have the investments in place, they create a trust to purchase the property. The trust, which is generally given the family name of the seller, names BLR as the beneficiary and Roop as the trustee.

8. For example, investor JK² invested a total of \$52,000 in two different properties in January 2013 using retirement funds through a self-directed IRA with Equity Trust Company. For each property investment he received: (1) a promissory note with a 36 month term, listing the borrower as a

¹ The Complaint also alleges that the Defendants' conduct violates the Act's antifraud provisions, § 11-51-501(1), C.R.S. This motion does not seek *ex parte* injunctive relief on that claim.

² Information identifying individual investors is being withheld to protect the investors' privacy. Unredacted documents are available if the Court determines that review of the identifying information is necessary.

family trust and Roop as the trustee, and noting any existing liens on the underlying property; (b) a “Note Payment Schedule” depicting the interest accrued each month and the total amount due at the maturity of the note; and (c) a deed of trust for the individual property. *See* Exhibit 1, Affidavit of Derrick O’Neal, ¶ 4 and Ex. A attached thereto, at 1-22 (redacted documents related to \$30,000 investment in 70 Spruce Dr., Woodland Park, Colorado and \$22,000 investment in 330 Ridge Drive West, Woodland Park, Colorado).

9. Defendants make their money off of this arrangement by subsequently selling the property, commonly under rent-to-own or installment land contracts. In the case of installment contract transactions, a buyer becomes an investor in the property when the buyer makes sufficient payments toward the agreed purchase price that the principal amount due on the underlying mortgage exceeds outstanding principal balance of the purchase price.

10. The Defendants acted as “mortgage broker-dealers” and/or “mortgage sales representatives” with respect to sales of the investments because, as these terms are defined in § 11-51-201(2) and (14), respectively, and Division Rule 51-2.1(I) and (J), respectively, they engaged in the business of effecting or attempting to effect the purchases and sales of these mortgage interests for the accounts of others or purchasing or selling securities for their own accounts.

11. BLR obtained a license as a mortgage broker-dealer in Colorado on March 11, 1996. Roop obtained a license as a mortgage sales representative for BLR on the same date. Defendants’ licenses were summarily suspended on July 2, 2012 upon a petition for an Order to Show Cause based on Defendants refusal to provide records and documents in response to a request pursuant to § 11-51-409(2). Defendants did not appear at the hearing before the Colorado Securities Board in the summary suspension proceeding, and failed to file an answer in the revocation proceeding before the Office of Administrative Courts. Defendants’ licenses were revoked by the Securities Commissioner effective the end of 2012 following an entry of default in September 2012. *See* Exhibit 2 (Initial Decision Upon Default dated October 10, 2012; Final Order dated December 18, 2012).

12. The suspension and revocation of Defendants’ mortgage broker-dealer license and sales representative license has not stopped Defendants from continuing to pursue their investment scheme. Between January and October of 2013, Defendants solicited investments from at least 7 additional investors, raising approximately \$284,000 to purchase 6 properties, despite the fact that

Defendants were not licensed as mortgage broker-dealers or sales representatives, and despite their continued failure to register any of the investments as required by the Act. Exhibit 1, ¶ 4 and Ex. A attached thereto.

LEGAL STANDARD

13. The Act outlines a specific statutory procedure that governs the Commissioner's authority to obtain a preliminary injunction or temporary restraining order:

Whenever it appears to the securities commissioner upon sufficient evidence satisfactory to the securities commissioner that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this article or of any rule or order under this article, the securities commissioner may apply to the district court of the city and county of Denver to temporarily restrain or preliminarily or permanently enjoin the act or practice in question and to enforce compliance with this article or any rule or order under this article.... In any such action, the securities commissioner shall not be required to plead or prove irreparable injury or the inadequacy of the remedy at law. Under no circumstances shall the court require the securities commissioner to post a bond.

§ 11-51-602(1), C.R.S.

14. Thus, unlike C.R.C.P. 65 and the six factor test described in *Rathke v. MacFarlane*, 648 P.2d 648, 653-54 (Colo. 1982), the Commissioner is not required to prove irreparable injury, demonstrate an inadequate remedy at law, or post bond. Furthermore, section 602(1) specifies that the Commissioner need only establish that a person has violated or is about to violate any provision of the Act to obtain a temporary restraining order or an injunction. In resolving this conflict, *Kourlis v. District Court*, 930 P.2d 1329, 1335 (Colo. 1997), is dispositive.

15. In *Kourlis*, the court considered the authority of the Commissioner of Agriculture to obtain a temporary restraining order or preliminary injunction. 930 P.2d at 1334-37. The Commissioner of Agriculture's authority, outlined in §

35-80-111(3), C.R.S., conflicted with the more general requirements of C.R.C.P. 65. The court determined that the specific requirements of § 35-80-111(3) prevailed over the general standards in C.R.C.P. 65.

16. Section 35-80-111(3) provided, in relevant part:

Whenever the Commissioner possesses sufficient evidence satisfactorily indicating that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this article or any rule adopted under this article, the commissioner may apply to any court of competent jurisdiction to temporarily or permanently restrain or enjoin the act or practice in question In any such action, the commissioner shall not be required to plead or prove irreparable injury or the inadequacy of the remedy at law. Under no circumstances shall the court require the commissioner to post a bond.

Id. at 1334 & n.12.

17. The Supreme Court concluded that § 13-80-111(3) specifically did not require the Commissioner of Agriculture to show irreparable injury, demonstrate the inadequacy of a remedy at law, and to post bond. *Kourlis*, 930 P.2d at 1336. The court reasoned that the remaining factors identified in *Rathke* should not be applied to frustrate the purposes of the Pet Animal Care and Facilities Act (“PACFA”). *Id.* Therefore, if the Commissioner of Agriculture demonstrated that he possessed “sufficient evidence satisfactorily indicating that any person has engaged in or is about to engage in” a violation of PACFA, he could obtain a preliminary injunction and a temporary restraining order. *Id.* at 1336-37.

18. The Act’s section 602(1) is materially identical to § 35-80-111(3). It sets forth a specific statutory procedure as part of a comprehensive statutory scheme. See § 11-51-101 through § 11-51-908, C.R.S. Accordingly, the standards in § 11-51-602(1) prevail over the more general requirements of C.R.C.P. 65 and *Rathke*. See *Feigin v. Digital Interactive Assocs., Inc.*, 987 P.2d 876, 883 (Colo. App. 1999) (Under section 602(1), the Commissioner is not required to satisfy the more general requirements of Rule 65 when applying for a temporary restraining order). The Commissioner thus only needs to produce “sufficient

evidence satisfactorily indicating that [Defendants Roop and BLR] have engaged in or is about to engage in” a violation of the Act to obtain a temporary restraining order or temporary injunction. *Kourlis*, 930 P.2d at 1336.

DEFENDANTS HAVE VIOLATED THE REGISTRATION AND LICENSING PROVISIONS OF THE ACT

19. In the Complaint for Injunctive and Other Relief (“Complaint”), the Securities Commissioner has alleged that Roop and BLR have violated the registration and licensing provisions of the Act. Compl. ¶¶ 27-37.

20. Section 11-51-301, C.R.S., the registration section of the Act, provides: “It is unlawful for any person to offer to sell or sell any security in this state unless it is registered under this article or unless the security or transaction is exempted under sections 11-51-307, 11-51-308, or 11-51-309.”

21. Section 11-51-401, C.R.S., the licensing section of the Act, provides: “A person shall not transact business in this state as a broker-dealer or sales representative unless licensed or exempt from licensing under section 11-51-402.” See § 11-51-401(1), C.R.S.

22. The investment interests offered by Roop and BLR are securities as that term is used in the Act. The Act defines a “security” as:

any note; stock; treasury stock; bond; debenture;
evidence of indebtedness; certificate of interest or
participation in any profit-sharing agreement;
collateral-trust certificate; preorganization certificate of
subscription; transferable share; investment contract;
viatical settlement investment; voting trust certificate;
certificate of deposit for a security; certificate of interest
or participation in an oil, gas, or mining title or lease or
in payments out of production under such a title or
lease; or, in general, any interest or instrument
commonly known as a “security” or any certificate of
interest or participation in, temporary or interim
certificate for, guarantee of, or warrant or right to
subscribe to or purchase any of the foregoing.

§ 11-51-201(17), C.R.S. Defendants are offering and selling investments in real estate that are at least notes, evidence of indebtedness, or investment contracts.

23. The securities offered and sold by Defendants were not registered, and – for at least some of the transactions – were not subject to any of the exemptions specified in 11-51-307, 11-51-308, or 11-51-309. The Defendants have not filed any Notice of Exemption with the Commissioner. *See* Certificate of Absence of Records, attached hereto as Exhibit 3, and Certificate of Licensure, attached hereto as Exhibit 4.

24. Defendant BLR's mortgage broker-dealer license and Defendant Roop's mortgage sales representative license were summarily suspended by the Securities Commissioner on July 2, 2012, and revoked by the Securities Commissioner effective December 18, 2012. *See* Exhibits 2, 4. Nonetheless, Defendants continued to pursue their investment scheme selling real estate securities throughout 2013. Exhibit 1, ¶4 and Ex. A.

25. Defendants Roop and BLR violated the Act because their investments are securities that are offered and sold in violation of the registration and licensing provisions of the Act.

26. If the Defendants are not restrained and enjoined from the conduct as alleged herein, citizens of the State of Colorado and the investing public at large will continue to suffer damage and loss by virtue of Roop's and BLR's ongoing conduct, all in violation of the Act.

NECESSITY FOR A TEMPORARY RESTRAINING ORDER OR A PRELIMINARY INJUNCTION

27. Pursuant to § 11-51-602(1), C.R.S. and *Kourlis*, the Commissioner only needs to produce sufficient evidence satisfactorily indicating that the Defendants have engaged in a violation of the Act to obtain a temporary restraining order or a preliminary injunction. As set forth in this Motion and the Complaint, the Defendants are offering to sell and selling real estate securities in violation of the registration and licensing provisions of the Act, to the detriment of the investing public in Colorado and other jurisdictions, all in violation of §§ 11-51-301 and 401, C.R.S.

28. Defendants continue to promote, offer to sell, and sell the securities from Colorado to investors.

29. The issuance of a temporary restraining order or a preliminary injunction will not create an undue hardship on the Defendants, since such order will only preclude the Defendants from violating the Act. Section 11-51-101(1), C.R.S., states that the purpose of the Act is to “protect investors and maintain public confidence in the securities markets....” And, section 602 specifically authorizes the Commissioner to seek injunctive relief as an enforcement tool. Thus, as statutorily authorized, enjoining the unlawful acts of the Defendants as described herein will serve the public interest by protecting investors. *See also, Black Diamond Fund LLLP v. Joseph*, 211 P.3d 727, 738 (Colo. App. 2009) (“compliance with the [Colorado Securities Act] is necessarily in the public interest. The passage of such laws by the legislature establishes the public interest underlying such provisions”).

30. Based upon his investigation, the Commissioner believes that the Defendants have in their possession documents and information relevant to this matter, which information and documents may be concealed, destroyed, or otherwise altered. The Commissioner requests that the Court enter an order, in connection with the temporary restraining order and preliminary injunction, directing Defendants to not destroy, mutilate, or otherwise dissipate any books, records or documents in its possession relating to the subject matter of this action pending further order of the Court, as destruction, concealment or other alteration of books, records or documents in the possession of the Defendants may irreparably damage the Court’s ability to grant final relief for investors in the form of restitution, rescission, disgorgement and other equitable relief.

WHEREFORE, Plaintiff requests the following relief:

1. A temporary restraining order and preliminary injunction or other Order of this Court, enjoining defendants Roop and BLR, their officers, agents, servants, employees, successors and attorneys, as may be; any person who, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under the common control with Defendants; and all those in active concert or participation with Defendants who receive actual notice of the Court’s Order by personal service, facsimile transmission or otherwise, from engaging in the following acts:

- a. Offering to sell or selling any security, including but not limited to the Defendants’ real estate interests, or similar security, to any person in or from Colorado, until further order of this Court;

- b. Transacting business in or from Colorado as a mortgage broker-dealer or sales representative, until further order of this Court; and
 - c. Destroying, mutilating, altering or in any other way dissipating the books and records of the Defendants Roop and BLR.
- 2. Expedited discovery in advance of the hearing on Preliminary Injunction.
- 3. Such other relief as this Court deems just and proper.

DATED this 3rd day of April, 2014.

JOHN W. SUTHERS
Attorney General

/s/ Jennifer H. Hunt

RUSSELL B. KLEIN, 31965*

Assistant Attorney General

JENNIFER H. HUNT, 29964*

Assistant Attorney General

Financial and Health Services Unit

Business & Licensing Section

Attorneys for Plaintiff

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VERIFICATION

I, Derrick O'Neal, being duly sworn, state as follows:

1. I am employed by the Colorado Division of Securities as an Investigator.
2. I am familiar with the information contained in the foregoing Verified Combined Motion for Temporary Restraining Order and Preliminary Injunction with Supporting Legal Authorities and Request for Expedited Discovery ("Verified Petition.")
3. I have reviewed the Verified Petition. The facts stated therein are true and correct to the best of my knowledge.

FOR THE STAFF OF THE COLORADO
DIVISION OF SECURITIES



Derrick O'Neal, Investigator

Subscribed and sworn before me this 2 day of April, 2014.


Notary Public

Commission Expiration: 2/16/16

